

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Northern Illinois Gas Company d/b/a	:	
Nicor Gas Company	:	
	:	Docket No. 09-0301
Petition for an order re-approving an	:	
agreement for provision of facilities	:	
services and the transfer of assets	:	
between Nicor Gas Company and	:	
Nicor, Inc. and its subsidiaries	:	

**VERIFIED RESPONSE OF INTERSTATE GAS SUPPLY OF ILLINOIS, INC.
AND THE MANCHESTER GROUP, LLC TO
NICOR GAS'S MOTION TO SUSPEND PROCEEDING**

Interstate Gas Supply of Illinois, Inc. ("IGS") and The Manchester Group, LLC ("Manchester"), by and through their attorneys, DLA Piper LLP (US), respectfully respond to the Motion to Suspend Proceeding ("Motion") filed by Nicor Gas ("Nicor") as follows:

I.

Introduction

Nicor's unverified, premature Motion to Suspend this proceeding should be denied. The Motion seeks to stop an ongoing Commission examination of a matter that the Commission specifically required in its Final Order entered on March 25, 2009, at the conclusion of the last Nicor Rate case, ICC Docket No. 08-0363. IGS and Manchester respectfully request that the Commission deny Nicor's Motion.

Although Nicor's Motion purports to seek relief "in the interests of administrative efficiency," the relief that Nicor seeks will not promote administrative efficiency, because the Motion itself seeks "an order to suspend this proceeding until the Commission enters an order resolving the issues in the Section 7-204 proceeding [ICC Docket No. 11-0046]." (Nicor Motion at 3.) No "administrative efficiency" will be achieved by suspending the instant proceeding until

ICC Docket No. 11-0046 concludes. On the contrary, suspension of this proceeding likely will result in administrative inefficiency. The instant proceeding has elicited substantial testimony – from Staff and several intervenors – that raises serious questions about Nicor’s current and historic transactions and interactions with its affiliates, purportedly pursuant to the affiliate agreement that is the subject of this proceeding. If this proceeding is suspended, those questionable transactions and interactions will continue indefinitely. Nicor has not presented any argument that would justify suspending this case under those circumstances. The better course would be to permit this proceeding to move expeditiously to hearings and a Commission Order, which in all likelihood would narrow the issues in ICC Docket No. 11-0046 and inform the Commission’s decision in that case, thus achieving true administrative efficiency.

II.

Nicor’s Motion Violates The Commission’s Rules Of Practice And Is Premature

Nicor’s Motion is unverified. Section 190(c) of the Commission’s Rules of Practice requires an Affidavit (usually submitted in the form of a “Verification” in typical Commission practice) to accompany motions “based on matter which does not appear of record.” (83 Ill. Admin. Code 200.190(c).) Paragraphs three through six, and arguably paragraph seven, of Nicor’s seven-paragraph Motion each contain “matter which does not appear of record” in the instant proceeding. Thus, the Motion is plainly non-compliant with the Commission’s Rules, and should be denied on that basis alone.

Nicor’s Motion also is premature. The Motion was filed on December 30, 2010. The Motion candidly recognized that the proceeding to seek Commission review of the AGL Resources, Inc./Nicor proposed merger would not be initiated for over two weeks from the date. That proceeding was initiated in ICC Docket No. 11-0046 on January 18, 2011. As of the date

of this Response, there has been no Commission action with respect to ICC Docket No. 11-0046, other than to schedule the first Prehearing Conference, which will occur on February 8, 2011. Under these circumstances, Nicor's Motion was prematurely filed.

III.

**Nicor's Motion Seeks To Suspend This Proceeding
Even Though Nicor Claims That ICC Docket No. 11-0046
Will Only Address "Prospective" Affiliate And Operating Agreements**

A close reading of Nicor's Motion reveals that Nicor intends to attempt to restrict the subject matter of the ICC Docket No. 11-0046 to the "prospective" use of affiliate and operating agreements. Nicor's Motion states that "during the course of the Section 7-204 approval proceeding [ICC Docket No. 11-0046], the Commission will be considering the operating agreements that may be prospectively applied to Nicor Gas' transactions with affiliates." (Nicor Motion at 2, ¶ 5 (emphasis added).) The Motion further states: "It is in the interests of administrative efficiency to require that only one proceeding address prospective affiliate and operating agreement issues involving Nicor Gas." (*Id.* at 3, ¶ 8 (emphasis added).)

In contrast, the instant proceeding is not about a "prospective" affiliate or operating agreement. It is about Nicor's current agreement (as Nicor made clear in its July 9, 2009 Petition initiating the instant proceeding), and in large part is about Nicor's historic and current transactions and interactions with its affiliates under that agreement -- those transactions and interactions directly inform the question of whether the Nicor agreement and Nicor's implementation of that agreement are compliant with the Public Utilities Act ("Act").

Thus, suspending the instant proceeding would not advance administrative efficiency because Nicor itself maintains that to the extent that affiliate and operating agreements are addressed in ICC Docket No. 11-0046, the inquiry should be limited to "prospective"

agreements. Notably, Nicor did not seek to consolidate the instant proceeding with ICC Docket No. 11-0046, as permitted by the Commission's Rules of Practice. (*See* 83 Ill. Admin. Code 200.600.)

The instant proceeding has resulted in extensive discovery and pre-filed testimony from both the Commission Staff and several intervening parties raising serious questions about the legality of transactions and interactions between Nicor and its affiliates, as well as whether Nicor's and Nicor's affiliates' interactions with Illinois customers comport with the Act, and whether Nicor's treatment of alternative gas suppliers and companies seeking to offer products and services in competition with Nicor's affiliates have been treated in a fair, competitively neutral manner by Nicor. (*See generally* Commission Staff Exs. 2.0, 4.0, and 5.0; Manchester Ex. 1.0; Dominion Retail Exs. 1.0 and 2.0; RESA Ex. 1.0; AG/CUB Exs. 1.0 and 2.0.) The issues raised in the instant proceeding are not merely "prospective," and the inquiry here should not be "suspended" merely because Nicor has another proceeding at the Commission that may address some subset of the issues that are being addressed here. A suspension now would permit Nicor to continue its questionable activities unabated, for an indefinite period of time.

IV.

Suspending The Instant Proceeding Would Be Inequitable, Burdensome, and Prejudicial

Nicor's Motion seeks to "suspend" a proceeding in which the Commission Staff and several intervening parties have expended substantial resources in an effort to determine whether Nicor's affiliate agreement, and its conduct pursuant to that agreement, comports with the Act. Suspending this proceeding would advance none of the "Standards for Discretion" criteria identified in the Commission's Rules of Practice. Neither "integrity of the fact-finding process" nor "fairness" nor "expedition" nor "convenience" nor "cost-effectiveness" would result from

suspension of this proceeding. (83 Ill. Admin. Code 200.25(a)-(e).) On the contrary, suspending the instant proceeding would advantage Nicor only, by permitting it to avoid Commission scrutiny and essentially “kick” the contentious issues in the instant proceeding down the road for, at a minimum, nearly a year.¹ Nothing in Nicor’s Motion justifies that course, and allowing that would be inequitable to the parties that have expended resources in the instant proceeding.

Suspending the instant proceeding would, for the reasons stated above, also create administrative inefficiency as well as unnecessary complexity. That result would be burdensome and prejudicial to the parties who have participated in the instant proceeding to date.

Nicor will almost assuredly argue in its Reply (as it did in its Reply on its recent Motion to Reschedule Filing of its Surrebuttal Testimony) that some of the parties in this case entered the case at a relatively late stage and thus somehow lack standing to object to a suspension. Any such argument is misplaced: parties are free to intervene in a case at any stage and by doing so accept the record of the case as it stands up to that point. (*See* 83 Ill. Admin. Code 200.200.) However, that does not mean that intervening parties are thereafter handicapped in their ability to advance arguments and engage in discovery in a manner compliant with the case schedule as then existing or as modified in the future. Of course, with respect to Nicor’s current request, neither the Staff nor the intervening parties had any way to know either that Nicor would enter into a proposed merger at any particular time or would seek to use that proposed merger as a basis to suspend the instant proceeding at any point. Suspension at this stage would be inequitable, burdensome, and prejudicial to every participating entity except Nicor.

¹ Of course, there is no assurance that ICC Docket No. 11-0046 will continue to advance and will reach a definitive conclusion. That proceeding is associated with a voluntary, proposed merger between Nicor and AGL Resources, Inc. – as such, the initiating application in that proceeding could presumably be withdrawn by those parties at any time.

V.

Conclusion

WHEREFORE, for the reasons stated, IGS and Manchester respectfully request that the Commission deny Nicor's Motion to Suspend Proceeding, set a revised schedule that brings the instant proceeding to a conclusion with all deliberate speed, and such further additional relief as it deems appropriate.

Respectfully submitted,

**INTERSTATE GAS SUPPLY OF ILLINOIS, INC.
and
THE MANCHESTER GROUP, LLC**

By: /s/ Christopher J. Townsend
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STATE OF ILLINOIS)
) SS
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VERIFICATION

Christopher N. Skey, being first duly sworn, on oath deposes and says that he is one of the attorneys for Interstate Gas Supply of Illinois, Inc. and The Manchester Group, LLC, that he has read the above and foregoing document, knows of the contents thereof, and that the same is true to the best of his knowledge, information, and belief.

Subscribed and sworn to me
this ____ day of January, 2011.

Christopher N. Skey
